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September 19, 2023

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Via ECF

The Honorable Craig T. Goldblatt
United States Bankruptcy Court
District of Delaware
824 North Market Street, 3rd
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Wilmington, DE 19801

**Re: George L. Mailer, Chapter 7 Trustee v. Todd S.
Nelson, et al.; D. Del. Bankr.
Adv. No. 20-50627 (CTG)**

Dear Judge Goldblatt:

I write jointly on behalf of George L. Miller, Chapter 7 Trustee (the "Trustee") and Defendants (collectively, the "Parties") to provide an update on the status of discovery that has taken place in the above-referenced adversary proceeding (the "Adversary Proceeding") since our last correspondence dated June 16, 2023 (the "June 16 Letter") [D.I. 147] and to request additional time for the Parties to propose an appropriate case management and scheduling order. In short, the Parties have continued their cooperation and remain in regular communication, but the volume of discovery in the possession of third parties remains unknown.

As Your Honor will recall, in the June 16 Letter, the Parties described their cooperation to address the enormous volume of potential discovery in this case, including documents and electronically-stored information ("ESI") in the possession of the Trustee and various third parties. In addition, the Parties detailed the volume of information already recovered and exchanged by the Parties through an informal and cooperative process. The Parties further explained that there were at least two known additional sources of potentially discoverable information. Those sources include: (1) the court-appointed receiver (the "Receiver") for Dream



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Center Foundation (“DCF”), an entity that purchased certain assets from Education Management Corporation and related entities (collectively, “EDMC”) prior to the bankruptcy filing; and (2) the court-appointed settlement administrator (the “Settlement Administrator”), who oversaw and annually reported on EDMC’s compliance efforts with the terms of various consent judgments.

As suggested in the June 16 Letter, the Parties jointly drafted and served a subpoena on the Receiver seeking the production of EDMC related documents and ESI in his possession after unsuccessful attempts to obtain the information through informal methods. The Receiver objected to the subpoena based on its amended appointment order from the United States District Court for the Northern District of Ohio, which set forth the rights and obligations of the Receiver. Rather than involving the Court in an inter-jurisdictional discovery dispute, the Parties conferred and decided to seek the Receiver’s cooperation once again in facilitating the production of EDMC’s files outside of the framework of a subpoena. Following several communications with the Receiver’s counsel, the Receiver committed to cooperating with the Parties and to produce EDMC related ESI based on the Trustee’s position as an interested party in the receivership while still preserving the Receiver’s objections to the subpoena. On Tuesday, September 5, 2023, the Receiver’s counsel assured the Trustee’s counsel that the Receiver would begin copying the ESI and sending hard drives to the Trustee’s counsel. While the Receiver’s counsel could not estimate the volume of data that will be produced, he stated that it would consist of randomly collected ESI that was likely significant in volume and, as the Receiver does not possess any useful index, that searching for specific files within that ESI would be time consuming and cumbersome. On the same day, the Parties’ counsel began discussing a procedure for narrowing, processing, and sharing the ESI upon its receipt.

Likewise, the Parties’ counsel have also been in communication with the Settlement Administrator regarding the production of certain EDMC related information. Previously, the Settlement Administrator cooperated with the Parties’ requests and assisted them in obtaining a copy of one of his annual reports that the Parties otherwise had been unable to locate. More recently, the Settlement Administrator committed to conferring with his firm’s general counsel to determine whether he is permitted to supply any



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further information and, if so, determine what information remains in his or his firm's possession.

In conclusion, as assured in the June 16 Letter, the Parties continue to cooperate and actively pursue discovery from third party sources. Nevertheless, the Parties remain unable to predict the amount of time necessary to receive and review information from third parties. Accordingly, the Parties respectfully request that the Court refrain from issuing a scheduling order and allow the Parties an additional 90 days to evaluate the information in possession of the Receiver and the Settlement Administrator and report back to the Court on appropriate case management deadlines.

Respectfully submitted,

/s/ Colin R. Robinson

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